

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.530 OF 2005
IN
WRIT PETITION NO.849 OF 1995

Sabri Mosque Trust & Anr.
Vs.

.... Petitioners

The State
& Ors.

of Maharashtra
.... Respondents

Shri R.S.

Tripathi

for the Petitioners.

Ms

S.M.

Dandekar,

AGP,

for

the

Respondents.

CORAM:

R.M.S.

KHANDEPARKAR

&

V.M.

KANADE,

JJ.

DATED:

OCTOBER

04,

2005

P.C:

1. Heard. This notice of motion is taken out for recall of the order of dismissal of the Writ Petition No.849 of 1995 passed on 13-9-2005 and restoration thereof to the board for final hearing.

2. Upon hearing the learned Advocates for the parties and perusal of the records, though the affidavit in support of the notice of motion discloses sufficient cause for failure on the part of the learned Advocate to appear before this Court when the matter was called out and dismissed for default, the restoration of the writ petition to the board would serve no purpose as while passing the order dated 13-9-2005 this Court had also taken into consideration the legal provisions applicable to the matter in controversy and bearing in mind the

decision of the Apex Court in **Welfare Association, A.R.P., Maharashtra and another v. Ranjit P. Gohil and others,** reported in (2003) 9 SCC 358, had held that the matter is fully covered by the said decision. Indeed undisputedly, the premises in question were requisitioned under the Bombay Land Requisition Act, 1948 with effect from 1-4-1953 for public purpose i.e. for the use of the Government grain shops and it is accordingly being used till this date. Considering the decision of the Apex Court and the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the occupants of the premises have acquired the status of tenant under the rent legislation and the petitioners being the landlord. Being so, the protection available under the rent legislation cannot be sought to be terminated by exercise of writ jurisdiction and ignoring the provisions of law comprised under the rent legislation which are applicable to the matter in issue. Being so, there is no case on merits in the matter and, therefore, the recall of the order dated 13-9-2005 would be of no consequence as far as the merits of the case is concerned and will be of no help to the petitioners in any manner. Hence the notice of motion is rejected with the above observations with no order as to costs.

(V.M. Kanade, J.)

(R.M.S. Khandeparkar, J.)